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TO : Commissioner for Patents
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FROM : Michael J. Marcin, Esq. of Fay Kaplun & Marcin, LLP
DATE : March 29, 2007
SUBJECT : US Patent Appln. Serial No. 09/588,037
for *System for Consumer Transaction Information*
that Follows the Consumer
Our Ref.: 40116/05504

NUMBER OF PAGES INCLUDING COVER : 17

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Attorney Docket No. 40116/05504 (A-68146)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Stout
Serial No. : 09/588,037
Filed : June 5, 2000
For : System for Consumer Transaction Information
that Follows the Consumer

Group Art Unit : 3626
Confirmation No. : 8559
Examiner : Vivek D. Koppikar

Mail Stop: Appeal Brief-Patents
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By: 

Michael J. Marcin (Reg. No. 48,198)

Date: March 29, 2007

TRANSMITTAL

Transmitted herewith please find a Reply Brief in response to the Examiner's Answer mailed on January 29, 2007 for filing in the above-identified application. No fees are believed to be required. However, the Commissioner is hereby authorized to charge any required fees to the **Deposit Account of Fay Kaplun & Marcin, LLP No. 50-1492**. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

Dated: March 29, 2007

By: 

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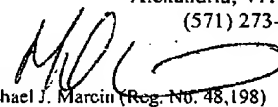
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MAR 29 2007

PATENT

Attorney Docket No.: 40116 - 05504

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
)	
J. Gregory STOUT)	
)	
Serial No.: 09/588,037)	Group Art Unit: 3626
)	
Filed: June 5, 2000)	Examiner: Vivek D. Koppikar
)	
For: SYSTEM FOR CONSUMER-)	Board of Patent Appeals and
TRANSACTION INFORMATION)	Interferences
THAT FOLLOWS THE CONSUMER)	

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 C.F.R. § 41.41

In response to the Examiner's Answer mailed on January 29, 2007 to the Appeal Brief filed June 26, 2006, and pursuant to 37 C.F.R. § 41.41, the Appellant presents this reply brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 30-49 in the final Office Action dated January 17, 2006 as clarified in the Advisory Action dated April 10, 2006 and further clarified in the Examiner's Answer dated January 29, 2007. The appealed claims are set forth in the attached Claims Appendix.

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1. Grounds of Rejection to be Reviewed on Appeal

- I. Whether claims 30-49 are unpatentable under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,055,573 to Gardenswartz et al. (“Gardenswartz”).

2. Argument

- I. The Rejection of Claims 30–49 Under 35 U.S.C. § 102(e) as Being Anticipated By U.S. Patent No. 6,055,573 to Gardenswartz Should Be Reversed.

In the Examiner’s Answer, the Examiner maintained that Gardenswartz discloses “receiving an indication of acceptance of the offer from the consumer at the first merchant location” and “associating the indication of acceptance with the unique identification of the consumer” and “retrieving the offer based on the identification of the consumer at the second merchant location, wherein the offer is applied to the second transaction,” as recited in claim 30.

As previously discussed in the Appeal Brief dated June 26, 2006, Gardenswartz describes a system in which rewards are redeemed during a subsequent visit. More specifically, Gardenswartz’s system provides targeted advertisements and rewards in return for a consumer’s compliance with predefined behavior patterns. (See Gardenswartz, col. 14, lines 51-55).

Noticeably absent from Gardenswartz is any indication or suggestion that the consumer accepts the rewards “at the first merchant location” and that the rewards are then “applied to the second transaction.”

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The Examiner has cited portions of Gardenswartz which purportedly show an acceptance of an offer at a first merchant location and a providing of the offer at a second merchant location separate from the first. (See Examiner's Answer, p. 5). However, it is respectfully submitted that the cited portions fail to show or suggest these limitations. In particular, the Examiner notes that Figure 1 of Gardenswartz shows separate first and second computers 10 and 12. However, these components do not constitute first and second merchant locations. The Examiner confuses the computers 10, 12 with the retail stores 2, 4 and 6, which transmit purchase data to a purchase history database 8. (See Gardenswartz, col. 5, line 61 - col. 6, line 4). The computers 10, 12 are actually separate from any of the retail stores 2-6 and are described as being home or office computers connected to the Internet. (Id. at col. 6, lines 36-52).

The Examiner cites a portion of Gardenswartz which describes the delivery of targeted messages over the Internet or via telephone, yet provides no explanation as to how this constitutes "receiving an indication of acceptance of the offer from the consumer at the first merchant location." (See Examiner's Answer, p. 5). The fact that the computers 10, 12 are separate from the retail stores highlights an important distinction between the present invention as recited in claim 30 and the system of Gardenswartz. Namely, because Gardenswartz delivers promotional information to consumers on their home computers in response to past purchases, there is no possibility of acceptance at a first merchant. Rather, Gardenswartz teaches that the consumer may receive the reward by visiting a specified retail location. (See Gardenswartz, col.

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16, lines 39-42). This does not, however, teach or suggest acceptance at a first merchant location, then applying the reward at a second merchant location.

The Examiner also maintains that Gardenswartz discloses "associating the indication of acceptance with the unique identification of the consumer" prior to redeeming the reward. The Appellants also respectfully disagree with this assertion. Gardenswartz never suggests that any indication of acceptance is stored. As shown in Fig. 11 of Gardenswartz, after the consumer is identified via a PIN number, rewards are automatically provided to the consumer upon satisfaction of a predetermined condition. (Id. at Fig. 11, step 1112). This is also shown in Fig. 10 of Gardenswartz, where a determination that a value contract has been fulfilled leads to delivery of the reward. (Id. at Fig. 10, steps 1008 and 1010). Thus, the entering of the PIN number does not indicate acceptance of the reward, but rather identifies the consumer and indicates a willingness to receive targeted messages, which include advertisements and promotional offers. (Id. at col. 18, lines 55-64).

Gardenswartz describes offering the consumer different value contracts based on whether the consumer complies with the terms of the contract. (Id. at col. 17, lines 19-42). This also does not indicate acceptance. As discussed in the Appeal brief, the consumer does not announce his intention to redeem the reward and may even trigger the reward conditions inadvertently. The decision to offer a different value contract is based on an observation of the consumer's past purchase behavior as well as a determination of whether a current value contract has expired before the conditions have been met. (Id. at col. 16, lines 50-63). New contracts are

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offered only if the current contract is expired. (Id. at Fig. 10, steps 1012 and 1014). At most, Gardenswartz describes providing an indication to the consumer that he is eligible for a reward or that he has satisfied the conditions for a reward. The consumer must still decide whether or not to accept the reward by fulfilling the conditions and then visiting the specified retail location. Prior to this visit, Gardenswartz's system has no knowledge of whether the consumer has any interest in redeeming the reward. Gardenswartz's system merely provides information relating to the reward and then waits for either an expiration of the reward or an acceptance of the reward at the time the consumer decides to redeem it.

Based on these reasons, it is respectfully submitted that Gardenswartz does not disclose or suggest "receiving an indication of acceptance of the offer from the consumer at the first merchant location" and "associating the indication of acceptance with the unique identification of the consumer" and "retrieving the offer based on the identification of the consumer at the second merchant location, wherein the offer is applied to the second transaction," as recited in claim 30. Accordingly, the Appellant respectfully requests that the Board overturn the Examiner's rejection under 35 U.S.C. 102(e) of independent claim 30 and all the claims depending directly or indirectly therefrom (claims 31-36).

Independent claim 37 was also rejected under 35 U.S.C. § 102(e) as anticipated by the Gardenswartz patent. Because claim 37 recites limitations substantially the same as those of claim 30, it is respectfully submitted that claim 37 is allowable for at least the same reasons. Accordingly, the Appellant respectfully requests that the Board overturn the Examiner's rejection

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under 35 U.S.C. § 102(e) of independent claim 37 and all the claims depending directly or indirectly therefrom (claims 38-45).

Independent claim 46 was also rejected under 35 U.S.C. § 102(e) as anticipated by the Gardenswartz patent. Because claim 46 recites limitations substantially the same as those of claim 30, it is respectfully submitted that claim 46 is allowable for at least the same reasons. Accordingly, the Appellant respectfully requests that the Board overturn the Examiner's rejection under 35 U.S.C. § 102(e) of independent claim 46 and all the claims depending directly or indirectly therefrom (claims 47-49).

Therefore, at least for the reasons stated above and the reasons stated in the previously filed Appeal Brief, it is respectfully submitted that all of the presently pending claims are allowable. The Appellant respectfully requests that the Board overturn the Examiner's rejection of these claims.


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3. Conclusions

For the reasons set forth above, the Appellant respectfully requests that the Board reverse the final rejections of the claims by the Examiner under 35 U.S.C. § 102(e) and indicate that claims 30-49 are allowable.

Respectfully submitted,

Date: March 29, 2007

By: 
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CLAIMS APPENDIX

30. (Rejected) A method, comprising:

identifying a consumer using a data capture device at a first merchant location where the consumer presents an instrument during a processing of a first transaction at the first merchant, wherein the consumer is identified with a unique identification stored in a data farm device;

presenting an offer to the consumer on an offer display device, the offer based on information from the first transaction;

receiving an indication of acceptance of the offer from the consumer at the first merchant location;

associating the indication of acceptance with the unique identification of the consumer;

identifying the consumer using a further data capture device at a second merchant location where the consumer presents the instrument during the processing of a second transaction; and

retrieving the offer based on the identification of the consumer at the second merchant location, wherein the offer is applied to the second transaction.

31. (Rejected) The method of claim 30, wherein the instrument is one of a credit card, a debit card and a customer loyalty card.

32. (Rejected) The method of claim 30, wherein the offer is a discount on merchandise.

33. (Rejected) The method of claim 30, wherein the second merchant location is independent from the first merchant location.

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34. (Rejected) The method of claim 30, wherein the information from the first transaction includes an identification of a purchased product.
35. (Rejected) The method of claim 30, further comprising the step of:
disassociating the indication of acceptance with the unique identification when the consumer completes the second transaction.
36. (Rejected) The method of claim 30, further comprising the step of:
disassociating the indication of acceptance with the unique identification when the second transaction is incomplete after expiration of a predetermined period of time.
37. (Rejected) A system, comprising:
a data capture device capturing consumer identification data at a merchant location where a consumer presents an instrument during a processing of a transaction and transaction data from the transaction;
a data farm device including a unique identification record for the consumer and a plurality of offers, the data farm device receives the consumer identification data to uniquely identify the consumer, and the transaction data, wherein the data farm device selects one of the offers based on the transaction data; and
an offer display device which receives the one of the offers from the data farm, displays the one of the offers to the consumer, receives an indication of acceptance of the one of the offers from the consumer and forwards the indication of acceptance to the data farm device, wherein the data farm device stores the indication of acceptance in the unique identification record of the consumer.
38. (Rejected) The system of claim 37, wherein the data capture device and the offer display device are physically located within a single merchant device.

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39. (Rejected) The system of claim 37, wherein the data capture device receives at least a portion of the transaction data from one of a cash register and a bar code reader.
40. (Rejected) The system of claim 37, wherein the data farm device is located remotely from the data capture device and receives the consumer identification data and the transaction data via a communications network.
41. (Rejected) The system of claim 40, wherein the communications network is one of an internet and an intranet.
42. (Rejected) The system of claim 37, wherein the instrument is one of a credit card, a debit card and a customer loyalty card.
43. (Rejected) The system of claim 37, wherein the data farm device is a server.
44. (Rejected) The system of claim 37, wherein the unique identification record is a database record.
45. (Rejected) The system of claim 37, further comprising:
a further data capture device capturing the consumer identification data at a further merchant location where the consumer presents the instrument during processing of a further transaction and further transaction data from the further transaction, wherein the data farm device receives the consumer identification data and further transaction data from the further data capture device, retrieves the one of the offers from the unique identification record based on the consumer identification data and the further transaction data and sends the offer to the further merchant location.

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46. (Rejected) A method, comprising:

- receiving consumer identification data from a data capture device at a merchant location where a consumer presents an instrument during processing of a transaction;
- identifying a unique consumer identification record based on the consumer identification data, the unique consumer identification record stored in a data farm device;
- receiving transaction data from the transaction;
- retrieving an offer based on the transaction data;
- sending the offer to an offer display device at the merchant location;
- receiving an indication of acceptance of the offer from the consumer at the merchant location; and
- associating the indication of acceptance with the unique consumer identification record.

47. (Rejected) The method of claim 46, further comprising:

- receiving the consumer identification data from a further merchant location where the consumer presents the instrument during processing of a further transaction;
- identifying the unique consumer identification record based on the consumer identification data;
- receiving further transaction data from the further transaction;
- retrieving the offer having the indication of acceptance in the unique consumer identification, wherein the further transaction data includes information relating to the offer; and
- sending the offer to the further merchant location.

48. (Rejected) The method of claim 47, wherein the offer is a discount on a product and the information in the further transaction data indicates the consumer is purchasing the product.

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49. (Rejected) The method of claim 47, wherein the transaction data includes identification of a product purchased by the consumer in the transaction.

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EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

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RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.